

November 13, 2013

The Chief Justice
The Supreme Court
Washington, DC 20543

Dear Chief Justice:

On Thursday, November 14, 2013, Justice Clarence Thomas will take the stage as the main feature at the Federalist Society's annual black-tie fundraiser at the Omni Shoreham hotel in Washington, D.C.

Lending the prestige of judicial office to promote a fundraising event of this type is a clear violation of the ethical standards embodied in the Code of Conduct for U.S. Judges, which is binding on all federal judges except the justices of the Supreme Court. Canon 4(c) of the Code bars federal judges from using the prestige of their judicial office for fundraising purposes, and its commentary specifically states that "a judge may not be a speaker, a guest of honor, or featured on the program" of a fundraising event.

The Federalist Society's website advertises the annual dinner as a \$200-per-person, "black tie requested" event "featuring an interview of Justice Clarence Thomas by Judge Diane Sykes."¹ A photograph of Justice Thomas and Judge Sykes accompanies the webpage with the link to purchase tickets. The dinner is separately ticketed from other activities taking place during the 2013 National Lawyers Convention and will be held at a different hotel.

In past years, corporations and major law firms, served as "Gold," "Silver," or "Bronze" sponsors, depending on how much they contributed for the event. The Federalist Society has not disclosed what dollar amounts are required for donors to get this attribution.

To attend the event—which was sold out well in advance and annually attracts a crowd of more than 1,200 lawyers, lobbyists, law professors, members of Congress, and executives—an individual must pay \$200 to the Federalist Society. For at least the past two years, the Federalist Society has solicited, and "gratefully acknowledge[d]," a variety of corporate and law firm sponsors for their "generous support" of the dinner, including many who regularly appear as parties or counsel in litigation before the Court.² Last year, for example, the annual dinner's "Gold Sponsors" included Chevron Corporation and Verizon, joined in 2011 by Pfizer, Inc. and the Coca-Cola Bottlers' Association. "Silver sponsors" last year included PepsiCo, Inc. and Time Warner, Inc. In 2011, the Supreme Court was reported to have considered in conference the petitions for certiorari filed by several "silver sponsor" law firms pertaining to the Affordable Care Act litigation. That very evening, the Federalist Society held its annual dinner honoring Justices Antonin Scalia and Clarence Thomas in a "celebration of service."

Justice Thomas has allowed the Federalist Society to use his image and role as featured speaker and guest of honor to sell tickets to the dinner. Were he a lower court judge, Justice Thomas's

¹ <http://www.fed-soc.org/events/detail/2013-national-lawyers-convention> (last accessed Nov. 11, 2013).

² The Federalist Society 2012 Annual Dinner Program & Seating Booklet; The Federalist Society 2011 Annual Dinner Program & Seating Booklet.

decision to lend the prestige of his judicial office in this way to raise money for the Federalist Society would violate the Code of Conduct. Moreover, we believe Judge Sykes to be in violation of the Code and have filed a complaint with the United States Court of Appeals for the Seventh Circuit.

In your 2011 Year-End Report, you wrote that the Code “plays the same role” for Supreme Court justices as it does for other federal judges.³ Specifically, you wrote that “[a]ll Members of the Court do in fact consult the Code of Conduct in assessing their ethical obligations. . . . We are all deeply committed to the common interest in preserving the Court’s vital role as an impartial tribunal governed by the rule of law.”⁴ Similarly, Justices Kennedy and Breyer have both stated that justices voluntarily abide by the Code; Justice Kennedy said that justices occasionally ask the Judicial Conference’s Committee on Codes of Conduct for advice on ethical issues, and Justice Breyer stated, “We do follow the rules. They do apply. And somehow it’s gotten around they don’t. Well, they do.”⁵

Justice Thomas’s appearance at the Federalist Society’s fundraising dinner indicates that the Code is not always followed by the justices. Were the Supreme Court to apply the Code of Conduct to its activities, Justice Thomas’s actions would be in violation of Canon 4(c). This lack of ethical accountability raises troubling questions in the eyes of the public about the Supreme Court justices’ ability adhere to universally accepted ethical standards and avoid the appearance of bias or impropriety.

We respectfully urge you to issue a letter of reprimand for Justice Thomas and to publish an official Court policy on the ethics issue at hand here.

To increase transparency and accountability in the activities of the Supreme Court Justices, we also urge the Supreme Court to adopt its own code of conduct that includes the five canons of the Code of Conduct for U.S. Judges.

Sincerely,

Louise M. Slaughter
Member of Congress

Nan Aron
President

Arn H. Pearson
Vice President for Policy and Litigation

³ CHIEF JUSTICE JOHN ROBERTS, 2011 YEAR-END REPORT ON THE FEDERAL JUDICIARY 4 (2011), *available at* <http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

⁴ *Id.* at 4, 10.

⁵ Nina Totenberg, *Bill Puts Ethics Spotlight on Supreme Court Justices*, NPR.ORG (Aug. 17, 2011, 12:01 AM), <http://www.npr.org/2011/08/17/139646573/bill-puts-ethics-spotlight-on-supreme-court-justices>.

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